



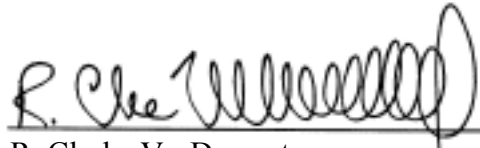
without prejudice should not be denied absent substantial prejudice to the defendant.” Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986). It is well established that prejudice to the defendant does not result from the prospect of a second lawsuit. See Vosburgh v. Indemnity Ins. Co. of N. Am., 217 F.R.D. 384, 386 (S.D. W.Va. Sep. 12, 2003). In considering a motion under Rule 41(a)(2), the District Court should consider the following relevant, but non-dispositive, factors: “(1) the opposing party’s effort and expense in preparing for trial; (2) excessive delay or lack of diligence on the part of the movant; (3) insufficient explanation of the need for a dismissal; and (4) the present stage of the litigation, i.e., whether a motion for summary judgment is pending.” Id.

Regarding these four factors, the undersigned finds that this case has not proceeded beyond the Defendant’s filing of an Answer to Plaintiff’s Complaint. Although Defendant has expended some time in preparing an Answer to Plaintiff’s Complaint and producing the Transcript of the administrative record, he has not incurred any considerable expense in preparing his brief in support of judgment on the pleadings. Concerning the third factor, Plaintiff’s counsel explains that Plaintiff has returned to the work force. Any prejudice to the Defendant therefore, has been slight, and dismissal of this case will bring an end to it. Moreover, Defendant apparently has no objection to the dismissal of this civil action.

Accordingly, for the reasons stated herein, it is hereby **ORDERED** that Plaintiff’s Motion to Dismiss (Document No. 16.) is **GRANTED** and this action is deemed **voluntarily DISMISSED** without prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2). The Clerk is directed to remove this action from the docket of the Court.

The Clerk is directed to file this Judgment Order and send a certified copy of the same to counsel of record.

ENTER: April 3, 2009.

  
R. Clarke VanDervort  
United States Magistrate Judge